malice, in its technical significance, from the fact that a dangerous weapon was used. But it is urged that there was no general criminal intent, for the killing was done under a mistake of fact; and, further, that it is impossible to consider what took place in Ohio with reference to the act done in Kentucky. To this there are two answers. In the first place, the act of decapitation itself was criminal, the wanton desecration of a dead body being looked upon as *contra bonos mores;* this alone is sufficient to supply the intent. But even were this not true, the general criminal intent may be supplied constructively from the criminal intent to poison. This is the ground the court takes. As evidence of this intent, acts in another State may be considered. Intent does not depend upon jurisdiction; it is a mental quantity, evidence of which may be received from any part of the globe. And as for the existence of the intent at the time of the killing, it would be a strange anomaly if it were law that the wicked state of a man's mind ceases as soon as he believes in the death of his victim, so that he is not responsible for the actual harm resulting from continued indignities. His particular acts may not accomplish the end he contemplates; but by construction the criminal intent is continuous, until the last step is taken in finishing the crime and in concealing its traces. Therefore, in this way too the general criminal intent existed at the time of the killing; and that intent, together with the "malice" implied from the use of a dangerous weapon, makes the act which was done murder.

This result is sanctioned by justice as well as by logic; for otherwise an atrocious murder, owing to an error in its commission, would be nowhere punishable, — not in Ohio, because the poisoning which took place there did not result in death, — not in Kentucky, because the criminality of the act would be held to have ceased before the death.

THE RIGHT TO FREEDOM OF CONTRACT. — The plaintiff in a recent case in an Ohio Circuit Court, (*Shaver* v. *Pennsylvania Co.*, 71 Fed. Rep. 931,) became a member of a relief association managed by the defendant railway, under an agreement that the acceptance of benefits from it for any disability should bar a suit for damages against the defendant. An Ohio statute made void such a term in the contract of a railway employee. The plaintiff having accepted aid from the association before suing the railway, the court held the statute unconstitutional, and the contract a valid defence.

The Ohio Constitution guarantees the rights of life, liberty, and property, and provides that laws of a general nature shall be uniform in their operation. The court thought the statute obnoxious to both of these provisions, inasmuch as it deprived the plaintiff of liberty to make contracts for his labor, and, being confined to railway employees, was not uniform in its operation.

There are a considerable number of decisions in this country denying the constitutionality of similar legislation. See *Millett* v. *People*, 117 Ill. 294 (1886); *Frorer* v. *People*, 141 Ill. 171 (1892); *Ramsey* v. *People*, 142 Ill. 380 (1892); *Braceville Coal Co.* v. *People*, 147 Ill. 66 (1863); *Comm.* v. *Perry*, 155 Mass. 117 (1891); *Godcharles* v. *Wizeman*, 113 Pa. St. 431 (1886); *State* v. *Loomis*, 115 Mo. 307 (1893); *State* v. *Goodwill*, 33 W. Va. 179 (1889). In all of these cases it is assumed that the constitutional guaranty of "liberty" includes "freedom of contract."

It is difficult to defend this assumption, historically or practically. The terms "life," "liberty," and "property," as used in the bills of rights of American constitutions, have all been derived from Magna Charta, and have been used in various English and American statutes, state papers, and political writings, in a similar sense, down to the framing of our American constitutions. The meaning of "liberty" as thus used was personal liberty, — freedom from bodily restraint. See 1 Black. Com. 127-129; 2 Kent Com. 26 ff.; and especially an article by C. E. Shattuck, 4 HARVARD LAW REVIEW, 365. These terms, in a clause whose significance had been well understood by English speaking publicists and lawyers for several centuries, were imported bodily into most of our American constitutions without indication of an intention to enlarge their scope. Historically, therefore, one can hardly justify a judicial extension of the meaning of "liberty" so radical as to embrace freedom of contract.

But, putting aside all lexicographer's arguments, is such an extension of meaning desirable or in accord with unquestioned legislative precedents? In most of the States there are laws avoiding contracts to pay more than a maximum rate of interest for the use of money; in many there are laws invalidating certain conditions in insurance policies deemed technical or oppressive; and in some there are acts forbidding parties by private contract to shorten the statutory period for bringing actions between them. The constitutionality of such legislation has never been doubted, nor is it difficult to discover a sound principle of public policy on which, within the discretion of the legislature, such laws may rest. Whenever two classes of persons may reasonably be supposed to stand in such relation to each other that the necessity or weakness of one deprives it of real liberty of action in regard to contracts between the two, it is a proper exercise of legislative power to interfere in behalf of the class in danger of being overreached. Opinions may differ about the need of such protection in a given case, but if the Legislature can reasonably decide that it exists, it is not for the judiciary to revise this determination. Surely it is not unreasonable to suppose that men practically compelled to seek their accustomed employment from a few large railway corporations may be at such a disadvantage in bargaining for the sale of their labor that it will be wise to forbid them altogether from making certain contracts. If interdictions against particular agreements concerning loans, insurance, and liability to suit are constitutional, it is not easy to distinguish from them the prohibition of the Ohio statute.

The objection that this is class legislation seems even less forcible. "The lawmaker necessarily deals with conditions as he finds them. If he observes, and wishes to abate, some fraudulent practice or abuse of power prevailing only in some one line of business, the fact that, in legislating to correct it, he does not also include in his remedy all other phases of human affairs, can furnish no reason for stigmatizing his remedy as no law at all." Barclay, J. (dissenting), in *State* v. *Loomis*, 115 Mo. at p. 322. In every State, mechanics' liens, and particular regulations relating only to carriers, bankers, auctioneers, pawnbrokers, insurance companies or warehousemen, bear witness to the necessity and wisdom of laws of special application to limited classes of persons. The principle of this legislation is well stated by Justice Field in *Barbier* v. *Connolly*, 113 U. S. at pp. 31, 32 (1884): "Regulatious for these purposes,

. . . though in many respects necessarily special in their character, . . . do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions."

Statutes of a character similar to the one in *Shaver* v. *Pennsylvania Co.* have been sustained in *Hancock* v. *Taden*, 121 Ind. 366 (1890); *State* v. *Manufacturing Co.*, 18 R. I, 16 (1892); and *State* v. *Coal Co.*, 36 W. Va. 802 (1892); and this is believed to be the sounder and more satisfactory doctrine.

LIMITATION OF THE RIGHT OF SELF-DEFENCE. — In the case of *Dabney* v. *State*, 21 So. Rep. 211, the Supreme Court of Alabama has placed a new restriction upon the right of self-defence. The trial judge instructed the jury, in a trial for murder, that if the defendant went to another's house, intending illicit intercourse with that other's wife, and armed himself, though merely for defence in case of attack, he was deprived of the right to kill in self-defence. The Supreme Court supports this position; in fact, the language of the court implies that in any case a man taken in adultery with another's wife cannot justify himself in killing the husband even in self-defence. There is no doubt that, if the defendant committed the wrongful act with the express purpose of creating an occasion for killing, he forfeited the right. In the absence of this express purpose the question is: Did the act amount in law to a provocation, and was the attack in fact provoked thereby? The court rightly answers, Yes. That the law recognizes adultery as provocation for an assault by the husband is shown by the fact that, if death results, the husband is held guilty not of murder but of manslaughter. It is a firmly established principle that he who provokes an attack is not justified in taking life to protect his own. Although in this case the defendant's motive was not to cause the affray, he voluntarily entered upon an act which the law holds to be a provocation, and which did in fact provoke the conflict that took place. Under these circumstances, the court was right in holding that he could not avail himself of the right of self-defence.

The court then proceeds to support the charge on other grounds: one who enters on a wrongful act, and contemplating interference on the part of another, arms himself with a deadly weapon, in order to take the other's life if necessary to save his own, is guilty of murder if he kills. This cannot be supported. The fact that the defendant armed himself merely in view of defending himself cannot militate against him, except as bearing upon his knowledge of the possibility of his being attacked. Does then the fact that a wrongdoer knows that his act may lead another wrongfully to attack him necessarily deprive him of the right of self-defence? It would seem that this can hardly be so. In applying the rule, confusion arises in many cases from a loose use of the word "provoke." If the defendant knew that trouble might arise, and yet persisted in his act, he might be said to have "provoked," in the sense of "given rise to," the affray. But did he in the legal sense provoke an attack? Was his act legally to be regarded as provocation of the murderous assault? Although not supported by the majority of the cases, the court of Kentucky is right in saying that a defendant killing in self-defence is not guilty unless he made it necessary or excusable for the deceased to put him in danger. *Thompson* v. *Commonwealth*, 26 S. W. Rep. 1100. The conviction here was rightly affirmed, not because the defendant armed himself against a